

# **HEALTH (TOBACCO, NICOTINE ETC. AND CARE) (SCOTLAND) BILL**

## **[AS AMENDED AT STAGE 2]**

---

### **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

#### **INTRODUCTION**

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.7 of the Parliament’s Standing Orders and aims to assist the Delegated Powers and Law Reform Committee in its consideration of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill. This memorandum describes provision in the Bill conferring power to make subordinate legislation that was introduced to the Bill at Stage 2. The memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

#### **PROVISION CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED AT STAGE 2**

3. The new delegated powers provision in the Bill is detailed below, with a short explanation of what the power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

#### **Section 25 — Definition of “responsible person”**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish Statutory Instrument  
**Parliamentary procedure:** affirmative procedure

#### ***Provision***

4. Section 25 is the interpretation section of Part 2 of the Bill and includes a definition of “responsible person”. A “responsible person” is the person that is required to comply with the duties in Part 2 (the duty of candour). This definition covers Health Boards; the Common Services Agency; local authorities; persons (other than individuals) who are providing health services (under arrangements or contracts with Health Boards), care services, social work services, or independent health care services; and individuals who provide care services but employ or make arrangements with others to assist in the provision of those services. The duty of candour procedure, to be set out in regulations using the power in section 22(1), can include

taking actions to meet with and apologise to the relevant person and provide support to them, as well as detail on recording and monitoring incidents and providing training and support to those carrying out the duty of candour procedure. Subsection (2) was inserted into section 25 at Stage 2 and provides the Scottish Ministers with power to modify the definition of “responsible person” in section 25(1).

***Reason for taking this power***

5. This new power is required to ensure that changes can be made to the definition of “responsible person” in light of future experience of implementation of the duty of candour. The Care Inspectorate in its evidence to the Health and Sport Committee raised a concern that providers of care services may choose to configure their businesses in such a way as to avoid the duty of candour. The immediate concern was directly addressed by other Stage 2 amendments to section 25(1), but there may be further changes required to cover arrangements not currently envisaged but which should be subject to the duty of candour. The new power would allow such arrangements to be added to the definition of “responsible person”. Equally the power will enable the Scottish Ministers to except persons from that definition should that be thought appropriate as the new duty of candour procedure is developed. As health and social care services evolve to become more integrated, the definition may need to be amended to include new arrangements, or exceptionally to remove persons that no longer have relevant functions.

***Choice of procedure***

6. Regulations made under this procedure are subject to affirmative procedure (by virtue of section 32(2)) which allows for a more detailed level of Parliamentary scrutiny. This is considered appropriate given that the regulations may be used to modify primary legislation. Any changes to the definition of “responsible person”, where arrangements are added to the definition, would result in those arrangements being subject to the duty of candour procedure with the consequent requirements for reporting, monitoring and training. The affirmative procedure allows for an appropriate level of scrutiny given the potential impact of adding persons to the definition.



*This document relates to the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill as amended at Stage 2 (SP Bill 73A)*

# **HEALTH (TOBACCO, NICOTINE ETC. AND CARE) (SCOTLAND) BILL**

## **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

Parliamentary copyright © Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website –  
[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

Published in Scotland by the Scottish Parliamentary Corporate Body.